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Using Labels, Not Law, to Justify Lethal Force: Inside the Venezuelan Boat Strike

By Mark Nevitt

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Pete Hegseth, Secretary of War,
'I'd say we smoked the drug boat, and
there's eleven narco terrorists at the bottom of the ocean.
And when other people try to do that, they're gonna meet the same fate"

'Unlawful' use of force to 'kill civilians' is better described as 'MURDER'

President Donald Trump announced on Tuesday that the U.S. military had attacked an alleged drug vessel in international waters, killing what he described as 11 "terrorists" who he claimed were members of the Tren de Aragua gang from Venezuela. The strike, which appears to be unlawful under international and domestic law, marks a sweeping escalation and departure from the U.S. military's approach to drug interdiction. Borrowing language from the post-9/11 "Global War on Terror," the Trump administration is attempting to turn counternarcotics missions into counterterrorism operations. But applying a new label to an old problem does not transform the problem itself – nor does it grant the U.S. president or the U.S. military expanded legal authority to kill civilians.

The Trump administration's description of the boat is not much different from any number of drug vessels and fast boats that attempt to evade U.S. authorities. As a former naval line officer and JAG who has both advised on the law of naval operations and witnessed firsthand how the Navy works with the Coast Guard to interdict suspected drug vessels, I can attest that the United States has longstanding *law enforcement* rules to deal with these situations. These rules have been in place for decades. Typically, such a boat would be intercepted and boarded, the drugs confiscated, and the people on board arrested and prosecuted. Longstanding law enforcement statutes and rules dictate that the Coast Guard takes the lead in maritime law enforcement operations, using well-established procedures to halt any suspected drug vessel. If the vessel refuses to comply, the Coast Guard may resort to firing warning shots and disabling fire. None of these escalation of force procedures were followed here—why?

The MURDEROUS 'attack appears to have been led by U.S. special operations forces'

This attack appears to have been led by U.S. special operations forces—not the U.S. Coast Guard. Rather than follow standard military procedures, the Defense Department, acting on the president's

orders, used an MQ-9 Reaper drone, run by special operators, or a military helicopter, to carry out the attack, killing everyone on board.

> **. . . 'on the president's [Trump's] orders, we blew it up. And it'll happen again.'**

Remarkably, Secretary of State Marco Rubio told reporters in Mexico on Wednesday that, "Instead of interdicting it, on the president's orders, we blew it up. And it'll happen again. Maybe it is happening right now." The decision to destroy and not interdict the alleged drug vessel, killing all civilians onboard, raises a host of questions and concerns. Brian Finucane has already done an expert job in outlining the core legal issues. Here, I want to explore the key operational concerns for the U.S. military, especially if these deadly strikes are going to continue, as the Trump administration promises.

Why Wasn't the Coast Guard Involved?

As a legal matter, the Coast Guard is the primary maritime law enforcement agency of the United States, with broad authorities under the Maritime Drug Law Enforcement Act and the Drug Trafficking Vessel Interdiction Act. Indeed, for the past several decades, the U.S. Coast Guard and other law enforcement agencies have taken the lead in combating maritime drug smuggling, a persistent problem in the Caribbean. The Navy and other military forces assist the Coast Guard in detecting and monitoring drug vessels headed to the United States. Although not perfect, this strategy allows the U.S. military to prioritize the capabilities it needs to fight wars, while tapping into the Coast Guard's deep law enforcement experience.

The military's supporting role in counternarcotics missions makes sense: the Coast Guard has broad legal authorities under U.S. domestic law as well as the requisite expertise in the nuances of evidence collection and boarding boats to lead the maritime interdiction mission. The U.S. Navy and other military assets have historically played a critical role in *assisting* with detection and monitoring drug activity, and they certainly have not preemptively attacked alleged drug vessels.

Indeed, under its broad statutory authorities under Title 14, the Coast Guard—but not the Navy or other military services—possesses the legal authority to search, seize property, and arrest persons suspected of violating U.S. law upon the high seas and waters over which the United States has jurisdiction. And these law enforcement boarding teams follow strict rules for use of force, relying on warning and disabling shots. Even these non-deadly actions must take place under strict conditions with higher-level approval.

Detailed Coast Guard instructions, as well as guidance found in the military's law of naval operations, prescribe in great detail the use of force policy for Coast Guard personnel when conducting counterdrug operations. The use of force measures include when warning shots and disabling fire are authorized.

First, warning shots can be lawfully employed if a suspected drug vessel fails to stop after calls to do so go unheeded. Warning shots, which *do not* constitute a use of force under international law, can be incredibly effective in a dynamic maritime environment. Warning shots send a forceful signal as part of a maritime interdiction to stop or maneuver in a particular manner or risk the employment of disabling fire or more severe measures.

Second, if warning shots and repeated calls to stop the vessel are ignored, the Coast Guard can employ use of force measures to include disabling fire. Disabling fire targets a noncompliant vessel's rudder or propulsion in an effort to halt the vessel before boarding. These sensible escalation of force measures, which are based on a law enforcement legal paradigm, have long been employed. Indeed, it has been Coast Guard policy for decades that commanders use warning shots as a predicate to disabling fire, and certainly before direct, kinetic action that kills people or destroys property.

There is still a lot unknown about the attack, but it appears that no warning or disabling shots were used before destroying the boat. Why weren't these tried and tested escalation of force tactics and procedures—which balance mission accomplishment with the unnecessary loss of life—employed before 11 people were killed?

I can speak from personal experience about the effectiveness of the Coast Guard's longstanding approach. I was a junior naval officer operating on a Navy warship in the 1990s that deployed with an embarked Coast Guard Law Enforcement Detachment (LEDET) team onboard. Upon suspicion of a suspected drug vessel—and consistent with international law and domestic legal authorities—the LEDET would spring into action to stop, board, search, and take follow-on law enforcement actions. Throughout the boarding process, the Navy warship actually shifted tactical control to the Coast Guard unit while the LEDET establishes communications with law enforcement entities. To signal the shift in tactical control, the Navy warship will fly the U.S. Coast Guard ensign until the completion of the operation.

In my experience, the Navy-Coast Guard team's involvement in counterdrug operations was incredibly effective. The Coast Guard could tap into the Navy's detection and monitoring assets while taking the lead when needed to interdict the suspected drug vessel. Why such a time-tested strategy that takes advantage of the Coast Guard's deep law enforcement expertise was not employed requires answers from this administration.

Today, there are reportedly a growing number of military assets in the Caribbean region, including at least three guided missile destroyers, at least one submarine, and both the Iwo Jima Amphibious Ready Group (composed of three warships) as well as the 22nd Marine Expeditionary Unit with 2,220 Marines. There is no evidence or reporting that the U.S. Coast Guard is being deployed alongside this

growing flotilla, providing further evidence that Trump views the confrontation with Venezuelan President Nicolas Maduro as something different in kind than a law enforcement mission aimed at interdicting drugs.

Erasing the Lines Between Law Enforcement and Military Operations

Because the strike against the boat clearly took place outside of an armed conflict, despite the administration's rhetoric seemingly intended to blur those lines, the attack could only be legally justified in a situation of self-defense involving an immediate threat of serious injury or loss of life to the U.S., its forces, or its citizens. The administration has provided no evidence of a threat meeting this well-established legal standard. To the contrary, the attack appears to have been a preemptive strike and not a self-defense response to a hostile act or demonstrated hostile intent. To be clear, drug trafficking and the opioid crisis have had deadly consequences for Americans, with tens of thousands of fatal fentanyl overdoses every year. But that is not the standard for launching a lethal military strike.

Taking a preemptive lethal strike against an alleged drug boat continues the White House's effort to blur the lines between law enforcement and the U.S. military's missions and authorities. The administration has justified the strike by describing it as "against a designated terrorist organization . . . in defense of U.S. national interests and in the collective self-defense of other nations." This vague language—which leans heavily on labeling Tren de Aragua a terrorist group akin to al Qaeda—is rooted in wartime, not law enforcement rules. Labeling a drug cartel a terrorist organization and killing 11 members on a vessel, which may or may not have been destined for the United States, under the guise of an amorphous "national interest" is an extraordinary and unprecedented assertion of presidential power.

Trump has also used this language, stating that the attacks were against the "Tren de Aragua Narcoterrorists," and that the attack "occurred while the terrorists were at sea in international waters transporting illegal narcotics, heading to the United States." Although the president stated that the drugs were heading to the United States, Secretary of State Rubio initially reported that the drug *vessel* itself was not. According to Rubio, the vessel was traveling "to Trinidad or some other country in the Caribbean." Trinidad is over 1,600 miles from Miami, the nearest major U.S. city. As of this writing, we do not know definitively the true destination of the vessel, its flag state, nor its origin.

The administration previously designated the Venezuelan Tren de Aragua gang, and a different Venezuelan-based group, Cartel do los Sole, as Foreign Terrorist Organizations (FTOs) and Specially Designated Global Terrorists (SDGTs). For good measure, the administration also labeled Maduro a

terrorist cartel leader. While none of these designations change the fact that the United States is not in an armed conflict with any cartel or with Venezuela, or facing the threat of an armed attack from these groups, their designations seem to have opened the door for the U.S. military to play a bigger role in drug interdiction, traditionally the realm of law enforcement. But as Tess Bridgeman, Rebecca Ingber, and Scott Roehm have noted in these pages, designating an organization a terrorist group does not by itself legally justify the use of force against it. To be sure, presidents can take preemptive action against terrorist organizations when necessary to repel sudden attacks or an imminent armed attack. Yet the administration has offered no evidence that this week's strike met this high standard.

The FTO designation is an attempt to shift the legal paradigm from law enforcement—to be clear, the only paradigm that lawfully applies based on the facts presented to the American public—to national security and military authorities, where more permissive combat rules of engagement would apply. If that is what is occurring—and we have yet to hear otherwise—combat rules of engagement authorize the use of force against "Any civilian, paramilitary or military force or terrorist(s) that has been declared hostile by appropriate US authority." Once a force is declared hostile, "U.S. forces need not observe a hostile act or demonstrated hostile intent before engaging the declared hostile force." Have these Venezuelan groups been declared hostile? If so, why? And under whose authority?

International humanitarian law—and the more permissive combat rules of engagement that seem to have been applied against the drug vessel—only applies in either an international or non-international armed conflict. We know that the president signed a still-secret directive in July instructing the Pentagon to use military force against some Latin American drug cartels, but the scope of the claimed authority remains unclear. The Department of Defense's own law of war manual states that individuals who are formally or functionally part of a non-state armed group that is *engaged in hostilities* may be made the object of attack following identification. To be sure, the military always preserves the inherent right to use force in self-defense—this would authorize the use of force to include deadly force against the vessel. But no evidence has been produced that the attack was in self-defense – indeed, Rubio has stated the opposite when he made clear that the boat could have been interdicted but was destroyed instead.

The Role of Lawyers

Finally, I have questions about how legal advice—particularly from military JAGs and operational law attorneys with deep expertise in this area—was given in this scenario. In Executive Order 14215, titled "Ensuring Accountability for All Agencies," Trump addressed the rules of conduct guiding federal interpretation of the law. A section titled "Rules of Conduct Guiding Federal Employees' Interpretation of the Law" states:

> The President and the Attorney General's opinions on questions of law are controlling on all employees in the conduct of their official duties. No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General's opinion on a matter of law . . .

Military JAG attorneys have the statutory authority and responsibility to provide independent legal advice without interference. Trump's EO attempts to suggest otherwise. For the attack on the drug vessel, what was the controlling legal advice provided, and who wrote the legal opinion? What was the military advice provided on the legality of this operation, and was it dismissed by higher officials in the Department of Justice?

Questions the U.S. Defense Department Should Answer

In sum, without further explanation and clearer evidence of the threat these groups pose to the American people, it is an enormous leap to portray these drug traffickers as organized terrorist organizations akin to al-Qaeda. Nor does labeling these groups "terrorists" alone authorize the use of military force, or trigger the military rules of engagement that apply in armed conflict. But it appears to be an attempt to do just that. Never before has drug trafficking been treated as terrorism, and there is a danger that with this rhetorical move, the Trump administration is attempting to open a new "forever war" against an amorphous set of actors who are not in reality engaged in hostilities against the United States. As Brian Finucane stated, the use of lethal force in this attack appears gratuitous. And it raises a broader question: what does the United States lose as a nation when the use of force is justified with such unsound legal reasoning and without a clearer explanation? There are more questions than answers about the legality of this attack, the vessel's flag, its origin and destination, why time-tested escalation of force measures were ignored, who provided the legal advice over this operation, and what that legal advice articulated. These questions deserve clear, concrete, and specific answers from this Administration.

FEATURED IMAGE: Crew members of the US Navy warship USS Sampson (DDG 102) are pictured at the Amador International Cruise Terminal in Panama City on September 02, 2025. Venezuelan President Nicolas Maduro said on September 1, 2025, that eight US military vessels with 1,200 missiles were targeting his country, which he declared to be in a state of "maximum readiness to defend" itself. (Photo by MARTIN BERNETTI/AFP via Getty Images)